

## Internal Revenue Service

Department of the Treasury  
Washington, DC 20224

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March 28, 2012

### Legend

Town =  
Plan or Trust =

Board =  
Committee =

System =

State =  
Date =

Dear :

This letter responds to a letter from your authorized representatives dated November 9, 2011, as well as subsequent correspondence, submitted on behalf of the Town, requesting a ruling that the Trust's income is excludable from gross income under Internal Revenue Code (IRC) § 115. The Town represents the facts as follows.

### FACTS

The Town is a political subdivision of the State. As a governmental employer it is subject to various State statutes governing public retiree health benefit trusts.

The Town established the Plan and the Trust under State law and in accordance with Town ordinance on Date, to provide health and welfare benefits under the System to former employees of the Town, as well as to their eligible dependents. Such benefits

will be provided through commercial insurance or by self-funding, and they may include coverage for hospitalization, medical and dental care, vision benefits, and life insurance. The Board adopted the Plan and it is responsible for administering the Plan. The Board may delegate its management authority to an insurance provider or a plan administrator.

The Committee has fiduciary responsibility for the proper operation of the Trust and it has authority to render decisions regarding participation in the Plan. The Committee and the Town's pension committee consist of the same members.

Assets of the Trust are separate from the Town's operating funds and they may not be used for, or diverted to, purposes other than to provide benefits under the Plan, and to pay the reasonable administrative expenses of the Plan and the Trust. The Trust may be amended at anytime by ordinance adopted by the Board or by collective bargaining between the Board and the applicable collective bargaining unit. Except as provided by applicable personnel policies or collective bargaining agreements, the Board can amend or terminate the Trust at any time and for any reason.

The Town represents that the Trust will be amended and restated in its entirety to provide that, upon dissolution of the Trust, any funds remaining after providing for all outstanding obligations will be returned to the Town.

## LAW AND ANALYSIS

IRC § 115(1) provides that gross income does not include income derived from any public utility or the exercise of any essential government function and accruing to a state or any political subdivision thereof.

Rev. Rul. 77-261, 1977-2 C.B. 45, holds that income generated by an investment fund that is established by a state to hold revenues in excess of the amounts needed to meet current expenses is excludable from gross income under IRC § 115(1), because such investment constitutes an essential governmental function. The ruling explains that the statutory exclusion is intended to extend not to the income of a state or municipality resulting from its own participation in activities, but rather to the income of an entity engaged in the operation of a public utility or the performance of some governmental function that accrues to either a state or political subdivision of a state. The ruling points out that it may be assumed that Congress did not desire in any way to restrict a state's participation in enterprises that might be useful in carrying out projects that are desirable from the standpoint of a state government and that are within the ambit of a sovereign to conduct.

Rev. Rul. 90-74, 1990-2 C.B. 34, holds that the income of an organization formed, funded, and operated by political subdivisions to pool various risks (e.g., casualty, public liability, workers' compensation, and employees' health) is excludable from gross

income under IRC §115(1), because the organization is performing an essential governmental function. In Rev. Rul. 90-74, private interests neither materially participate in the organization nor benefit more than incidentally from the organization.

The Trust provides health and welfare benefits to retired Town employees and their dependents. Providing health and welfare benefits to former public employees constitutes the performance of an essential governmental function within the meaning of IRC § 115(1). See Rev. Rul. 77-261 and Rev. Rul. 90-74.

The income of the Trust accrues to the Town, a political subdivision of the State. No private interests participate in, or benefit from, the operation of the Trust, other than as providers of goods or services. The dedication of the assets of the Trust for the exclusive benefit of retiree participants and their dependents satisfies an obligation of the Town under the Plan to provide health and welfare benefits to its retired employees. The benefit to retired Town employees is incidental to the public benefit. All of the Trust's assets that remain upon dissolution of the Trust (after providing for all outstanding obligations) will be distributed to a state, a political subdivision of a state, or an entity the income of which is excludable under IRC § 115. See Rev. Rul. 90-74.

Based solely on the facts and representations submitted on behalf of the Town, and provided that the Trust is amended as represented, we conclude that:

Because the income of the Trust is derived from the exercise of an essential governmental function and will accrue to a state or a political subdivision thereof, the Trust's income is excludable from gross income under IRC § 115(1).

No opinion is expressed concerning the federal tax consequences under any IRC provision other than the one specifically cited above. This ruling concerns only the federal tax treatment of the Trust's income and may not be cited or relied upon as to any matter relating to the taxation of accident or health contributions or benefits. In particular, no opinion is expressed regarding whether contributions or premiums paid on behalf of, or benefits received by, employees, former employees, retirees, spouses, dependents, or others will or will not be taxable.

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter.

This ruling is directed only to the taxpayer who requested it. IRC § 6110(k)(3) provides that this ruling may not be used or cited as precedent.

In accordance with the Power of Attorney on file with this office, your authorized representative will receive a copy of this letter.

Sincerely,

Kenneth M. Griffin  
Chief, Exempt Organizations Branch  
(Tax Exempt & Government Entities)

Enclosure (1)

cc: